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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FURNITURE ROYAL, INC., a Nevada)	
Corporation,)	CASE NO.:
)	DEPT.:
Plaintiff,)	
vs.)	COMPLAINT
)	
SCHNADIG INTERNATIONAL CORP. d/b/a)	
CARACOLE , a North Carolina Corporation,)	
WAYFAIR, INC. a Delaware Corporation d/b/a)	
WAYFAIR and PERIGOLD,)	
)	
Defendants.)	
)	

COMES NOW, Plaintiff, FURNITURE ROYAL, INC., by and thorough its attorney of record, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, who hereby submits the foregoing Complaint and complains of Defendants and each of them and alleges as follows:

I.

JURISDICTION & VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 ,and 15 USC §1, 2, under the Sherman act, and the Clayton Act, Sections , 5, and 16, as amended; 15 U.S.C.A. § 13 (Robinson-Patman Antidiscrimination Act of 1936) and in addition the Court has jurisdiction over the Parties based on diversity of citizenship.

1 2. This action is not based upon the public disclosure of allegations or transactions
2 in a criminal, civil, or administrative hearing, in a congressional, administrative, or General
3 Accounting Office report, hearing, audit, or investigation, or from the news media.

4 3. Venue is proper in this District under 28 U.S.C. §1391 because a substantial part
5 of the events or omissions giving rise to the claims occurred, or a substantial part of property that
6 is the subject of the action is situated in the State of Nevada. In addition, for purposes of venue,
7 Defendants are corporations and, as such, are deemed to reside in this judicial district because
8 they are subject to personal jurisdiction in the State of Nevada.
9

10 4. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants, are unknown to Plaintiff. Plaintiff is informed and believes and
12 thereon alleges that each of the Defendants is responsible in some manner for the events and
13 happenings herein referred to and damages caused proximately thereby to Plaintiff as herein
14 alleged. That Plaintiff will ask leave of this Court to amend this Complaint to insert the true
15 names and capacities of said Defendants, when same have been ascertained by Plaintiff, together
16 with appropriate charging allegations, and to join such Defendants in this action.

17 **II.**

18 **PARTIES**

19 5. Plaintiff, FURNITURE ROYAL, INC., is a Nevada Corporation, is a business
20 operating in the State of Nevada, County of Clark.

21 6. Defendant, SCHNADIG INTERNATIONAL CORP. d/b/a CARACOLE
22 (hereinafter CARACOLE) at all times relevant herein was a North Carolina Corporation, doing
23 business in Nevada. SCHNADIG INTERNATIONAL CORP. is a United States Corporation
24 wholly owned by MARKOR FURNITURE INTERNATIONAL CORPORATION, a Chinese
25 Corporation listed on the Shanghai Stock Exchange.

III.

8. There are four phases of the supply chain: commodities, manufacturing, distribution, and retail.

10. Defendants CARACOLE are the manufacturers of high style furniture line, offering “Couture” furniture allowing the consumer to custom order pieces according to taste and preference. The furniture industry is nationwide in scope and involves, the manufacture and marketing of such products across the United States of America. The relevant geographic market for furniture products is nationwide in scope.

12. CARACOLE also utilizes advertising platforms such as e-commerce to sell and distribute to consumers directly; specifically, CARACOLE places furniture on website such as PERIGOLD.COM (hereinafter “PERIGOLD”) and WAYFAIR.COM (hereinafter “WAYFAIR”) an e-commerce advertising site.

1 14. PERIGOLD and WAYFAIR utilize their websites as platforms to
2 advertise and display the furniture sold directly by the manufacturer and purchased by
3 the consumer. When consumers view Caracole products and furniture on the advertising
4 platforms WAYFAIR and PERIGOLD, the furniture is priced at up to 40% discount
5 below what Caracole Manufacturers Suggested Retail Price (“MSRP”). Both advertising
6 platforms PERIGOLD and WAYFAIR spend millions of dollars annually to advertise
7 these Caracole products, providing a platform for Defendant Caracole to compete with
8 retailers such as FURNITURE ROYAL.

9 15. PERIGOLD and WAYFAIR markets and sell Caracole products online for
10 the reduced discount set up by Defendant CARACOLE, directly competing with
11 retailers and dealers.

12 16. PERIGOLD, WAYFAIR and CARACOLE, by and through selling Caracole
13 products, make resale price maintenance (RPM) protections obsolete and small business
14 owners such as Plaintiffs herein are undercut and competition is reduced by allowing
15 consumers to simply purchase CARACOLE’s product online with PERIGOLD and
16 WAYFAIR acting as the marketing and advertising platform for CARACOLE.

17 17. During the time period covered by this Complaint, Defendant has sold and
18 shipped substantial quantities of Caracole furniture in a continuous and uninterrupted flow of
19 interstate commerce to its customers located in other states.

20 18. Defendants established and have operated facilities located in Greensboro, North
21 Carolina, and have sold and shipped their furniture in various states of the United States. These
22 furniture orders were shipped directly to the consumer by Defendant CARACOLE, following
23 display on PERIGOLD and WAYFAIR in a continuous and uninterrupted flow of interstate
24 commerce.

1 19. Any restraint upon free competition in the manufacture, marketing or sale of
2 furniture by CARACOLE in the United States necessarily and directly restrains and affects
3 interstate commerce in and among the states. Plaintiff is engaged in the business of purchasing
4 and selling CARACOLE furniture products in the State of Nevada, in competition with
5 CARACOLE.

6 **A. COURSE OF DEALINGS**

7 20. Plaintiff has been purchasing from CARACOLE since March, 2010. During or
8 about 2016, CARACOLE commenced advertising with WAYFAIR.COM. In September 2017,
9 WAYFAIR.COM launched the subsidiary website PERIGOLD.COM as a high end platform to
10 sell CARACOLE products directly to the public.

11 21. Defendants CARACOLE breached its express and implied agreements with
12 Plaintiff's business by offering to and agreeing with PERIGOLD and WAYFAIR to sell
13 CARACOLE furniture directly to the consumer. PERIGOLD and WAYFAIR offered their e-
14 commerce websites to CARACOLE so that CARACOLE can sell directly to consumers,
15 bypassing and cutting out dealers and retailers across the United States.

16 22. CARACOLE offered to sell and continues to offer to sell furniture to consumers
17 at prices below retailer pricing on the PERIGOLD and WAYFAIR platform ("favored
18 customers"), including FURNITURE ROYAL, and below the price at which FURNITURE
19 ROYAL can sell to the consumer. FURNITURE ROYAL is and remains to be excluded from the
20 market.

21 23. FURNITURE ROYAL's customers have used the Furniture Royal store as an
22 "Exhibit Room" solely to see the product in person and then purchase directly from
23 CARACOLE on websites such as PERIGOLD and WAYFAIR, whereby orders are directly
24 shipped from CARACOLE to the customers location and delivery address.
25

1 **B. ANTITRUST OFFENSE CHARGED**

2 24. During the period commencing 2016 and continuing up to and including the
 3 present time Defendant CARACOLE, has sold directly to consumers, using WAYFAIR and
 4 PERIGOLD as advertising platforms through ecommerce at a significantly reduced price,
 5 unlawfully fixing the price of their goods and unfairly competing with retailers across the
 6 Nation. These customers have been treated as “favored customers” by purchasing directly from
 7 the manufacturer Caracole.

8 25. Defendants engaged in the conduct alleged above with the specific intent to
 9 compete with retailers, such as Plaintiff and sell Caracole furniture products at a reduced price.

10 26. Defendant CARACOLE has unlawfully and willfully abused, exercised and
 11 misused the power in violation of Section 2(a) of the Robinson Patman Act, 15 U.S.C.A. § 13, as
 12 amended.

13 27. Defendant CARACOLE’s abuse, exercise and misuse of the PERIGOLD and
 14 WAYFAIR ecommerce website to compete with retailers in sells and manufactures for, have had
 15 the following unlawful purposes and objectives, inter alia:

16 (a) To attempt to exclude competition in the relevant markets consisting of Nevada
 17 and other states of the United States;

18 (b) to foreclose, restrain and exclude competition, including price competition, among
 19 sellers of Caracole furniture.

20 (c) to foreclose and exclude Plaintiff as a price competitor;

21 (d) to foreclose, restrain and exclude competition, including price competition, among
 22 manufacturers and dealers of Caracole furniture;

23 (e) to impose territorial, geographic and product restrictions and limitations on
 24 Plaintiff and other sellers of Caracole furniture and to foreclose, restrain and exclude competition
 25 between them; and

1 (f) to deprive Plaintiff and other sellers of an opportunity to engage in the business of
2 selling furniture in a free, open and competitive market.

3 28. In furtherance of the unlawful purposes and objectives, as described above,
4 Defendant CARACOLE engaged in and carried out the following unlawful acts and conduct,
5 inter alia:

6 (a) Defendant CARACOLE provided favored customers with 40% discounts below
7 MSRP, *i.e.*, reduced rates on their furniture when purchased through e-commerce platforms
8 PERIGOLD and WAYFAIR (*i.e.* “favored customers”).

9 (b) Defendant CARACOLE sold furniture directly to customers, bypassing its dealer
10 network, and selling pieces of furniture at prices below its best dealer price, in order to lock in
11 the selected customer with using such ecommerce platforms.

12 (c) Defendant abused, exercised and misused the exclusive manufacturing power as
13 described above;

14 (d) Defendant attempted to enlarge and expand its exclusive and monopoly power, as
15 described above, and to acquire, exercise and, and to exclude competition in the relevant markets
16 consisting of the State of Nevada and other States in the United States.

17 (e) Defendants combined and conspired to and did foreclose and exclude Plaintiff as
18 a competitor, including as a price competitor, by selling directly to customers, and competing
19 directly with Plaintiff as retailer and dealer of Caracole products. Therefore Plaintiff was
20 restrained and excluded from effectively competing in the sale of Caracole products in the
21 relevant market was foreclosed, restrained and excluded.

22 (f) Defendants deprived Plaintiff and other furniture retailers of an opportunity to
23 engage in the business of selling Caracole products in a a free, open and competitive market,
24 thereby preventing the distribution of furniture into the market place in an efficiently and
25 competitive manner.

1 **C. EFFECTS ON COMPETITION AND THE MARKET**

2 29. CARACOLE's abusive exercise of competition with retailers and dealers and
3 misuse of power, have substantially excluded, foreclosed and lessened competition. There is an
4 attendant dangerous probability of success that Plaintiff and other retailers similiaiy situated, will
5 be excluded as a competitor in the following respects, inter alia:

6 (a) Defendant's acts and conduct of selling directly to customers, at substantially
7 reduced prices has had the effect of restraining and foreclosing Defendant's
8 competitors, from competing and increasing their market shares, and has enabled
9 Defendant to maintain or increase its share of the market.

10 (b) Defendant's acts and conduct of selling directly to customers, as alleged above,
11 has had the effect of restraining and foreclosing retailers and dealers of Caracole
12 products, from competing with Defendants for the reason that these retailers and
13 dealers must purchase Defendant's furniture at prices which exceed Defendant's
14 direct sale prices to customer's on WAYFAIR and PERIGOLD platform, and has
15 had the the additional effect of reducing sales and market shares of retailers and
16 dealers of Caracole products.

17 (c) Defendant's acts of selling directly to customers ("Favored Customers") at a
18 significantly reduced prices through WAYFAIR or PERIGOLD, has had the
19 effect of "Nonfavored Customers" being forced to pay higher prices for Caracole
20 products at retail locations. As a consequence, competition between "favored" and
21 "Nonfavored" customers of Caracole products has been reduced and foreclosed.
22 This has had the effect of increasing the market share of "favored customers", and
23 has prevented "non-favored customers" from competing efficiently with favored
24 purchasers.
25

(d) Competition, including price competition among Defendant CARACOLE and retailers and dealers of Caracole products has been substantially excluded, foreclosed and lessened;

(e) Retailers and dealers of Caracole products have been denied the benefits of a free, competitive and open market and choice in the market place among places to purchase Caracole products has been restrained, foreclosed and eliminated.

D. INJURY TO PLAINTIFF:

30. CARACOLE's actions, abuse, exercise of price fixing and attempt to price fix, have directly and proximately caused injuries to Plaintiff's business and property, and will continue to cause substantial and immediate injuries to Plaintiff's business and property in the following respects; inter alia:

(a) Plaintiff has been restrained, foreclosed and excluded as a competitor, including as a price competitor, from the market of selling Caracole products;

(b) Plaintiff has been coerced and required to withdraw from competition and sales of Caracole products;

(c) Plaintiff has been deprived of an opportunity to engage in the business of selling Caracole products in a free, open and competitive market;

(d) Plaintiff has lost business, customers, sales, income and profits;

(e) Plaintiff has suffered injuries to its business, property and business organization built up over many years, involving substantial investment and having substantial value;

(f) Plaintiff has suffered injuries to its standing in the market place and business community and to its business reputation.

31. Plaintiff is engaged in the business of purchasing and selling Caracole products in the State of Nevada and Defendants have engaged in price discrimination by placing furniture on

1 advertising platforms such as Wayfair and Perigold, and selling same at a reduced manufacture
2 price.

3 32. This type of price predation by Defendants is an attempt to wipe out its smaller
4 competitors by using its deeper pockets to undercut the competitors' prices, thereby taking away
5 their customers.

6 IV.

7 GENERAL ALLEGATIONS

8
9 32. Plaintiff incorporates by this reference the allegations contained in all of the
10 preceding paragraphs as if fully set forth herein.

11 33. CARACOLE manufactures furniture, which are purchased upstream by
12 companies such as FURNITURE ROYAL to sell to the public.

13 34. CARACOLE also advertises on internet platforms such as Wayfair.com,
14 Perigold.com. to sell directly to consumers by placing furniture on these advertising platform
15 sites and is a direct competitor of FURNITURE ROYAL.

16 35. CARACOLE uses these internet advertising platforms to sell directly to
17 consumers in direct competition with dealers and retailers like FURNITURE ROYAL.

18 36. CARACOLE undercuts retailers by providing a discount through these online
19 platform websites ("favored customers") whereby forcing retailers to discount the product to
20 the conform to the platform sites.

21
22 37. In fact, CARACOLE is extending preferential pricing to customers by using the
23 internet platform sites, despite providing manufactures suggested retail prices (MSRP) to
24 retailers selling CARACOLE products.

1 38. Contrary to CARACOLE's assurances that its prices were fixed, CARACOLE
2 was selling directly to consumers at reduced prices by and through online advertising platforms
3 such as Wayfare.com and Perigold.com.

4 39. Not only did CARACOLE mislead FURNITURE ROYAL about its pricing, but
5 by duping FURNITURE ROYAL into believing that CARACOLE's prices were fixed,
6 CARACOLE placed FURNITURE ROYAL at a distinct disadvantage against CARACOLE, by
7 allowing customers to purchase off the internet platforms at a discount off the MSRP instead of
8 retailers such as FURNITURE ROYAL.

9 40. For example, a customer would see CARACOLE furniture at FURNITURE
10 ROYAL's store in Las Vegas, Nevada and would then purchase it online through an internet
11 platform Defendants Wayfair.com and Perigold.com that was discounted by CARACOLE to
12 compete with retailers.

13 41. Not surprisingly, as a result of the secret price collusion between CARACOLE
14 and the internet platforms, Wayfair.com and Perigold.com, CARACOLE is not only competing
15 with Retailers it distributes to but also, is profiting off the ability of customers going to
16 furniture showrooms and seeing the furniture in person, while purchasing it directly from the
17 manufacturer online at a discount.

18 42. CARACOLE has an insurmountable advantage over FURNITURE ROYAL by
19 offering special pricing on the furniture since it is being sold directly by the manufacturer on a
20 internet website platform.

21 43. At the time of entering into the Agreement to sell Caracole furniture,
22 FURNITURE ROYAL had no knowledge that, CARACOLE was using internet websites to
23 advertise and directy sell the same furniture at a discount directy to the consumer.
24
25

VII.

THIRD CLAIM FOR RELIEF
(ALL DEFENDANTS Violation of Sherman Act, 15 U.S.C. § 1

57. During the period beginning at least as early as 2016 and continuing through at least the present time, each of the defendants and co-conspirators engaged in various combinations and conspiracies with other of the defendants and co-conspirators in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The offenses are likely to recur unless the relief hereinafter prayed for is granted

58. These combinations and conspiracies consisted of agreements, understandings, and concerted actions to decrease prices on Caracole products and eliminate manufacture suggested retail price.

59. For the purpose of forming and effectuating these combinations and conspiracies, the defendants and co-conspirators, through e-commerce advertising platforms, did the following things, among others:

- (a) Discriminated between favored and non favored customers
- (b) Conspired and colluded to sell Caracole products from the manufacturer directly to the customer, bypassing retailers and dealer pricing;
- (c) Excluded competition in the State of Nevada and other states of the United States;
- (d) Combined and conspired to and did foreclose and exclude Plaintiff as a competitor, including a price competitor, by imposing substantially reduced fixed prices;
- (e) Deprived Plaintiff and other furniture retailers of an opportunity to engage in the business of selling Caracole products in a free, open and competitive market, thereby

1 preventing the distribution of Caracole products into the market place in an efficient
2 and competitive manner.

3
4 60. These combinations and conspiracies had the effect of price competition among
5 retailers and defendants for sale of Caracole products has been unreasonably restrained; and
6 consumers have been deprived of the benefits of free and open competition in the sale of
7 Caracole furniture and products.

8 61. As a direct and proximate result of Defendants' unlawful conspiracy, Plaintiff
9 has been damaged in excess of One Million US Dollars ,an exact amount to be proved at trial.

10 62. Plaintiff alleges upon information and belief that Defendants' actions were done
11 willfully, with the intent to cause injury to Plaintiff, and in conscious disregard of Plaintiff's
12 rights. Defendants, and each of them, are therefore, guilty of malice and oppression, and
13 Plaintiff is entitled to an award of punitive damages appropriate to punish Defendants, and each
14 of them, and to deter others from engaging in similar misconduct.

15
16 VIII.

17 **FOURTH CLAIM FOR RELIEF**
(Fraudulent Misrepresentation)

18 63. Plaintiff incorporates by this reference the allegations contained in all of the
19 preceding paragraphs as if fully set forth herein.

20 64. Defendant falsely represented to Plaintiff that it did not offer any special pricing
21 on its furniture to consumers or sell to consumers directly. Specifically, Plaintiffs inquired
22 whether there was special pricing and Defendants denied such actions.

23 65. Defendants knew or should have known those representations were false.

24 66. Defendants intended to induce Plaintiff into continued sale of Caracole products
25 by having a place to showcase Caracole products in a local market.

67. Plaintiffs justifiably relied on Defendants' representations that its prices were fixed, and that Defendants were not undercutting retailers.

68. As a result of Defendants's misrepresentations, Plaintiff has suffered financial damage in an amount to be determined at trial, which amount is in excess of One Million US Dollars.

69. Plaintiff alleges upon information and belief that Defendant's actions were done willfully, with the intent to cause injury to Plaintiff, and in conscious disregard of Plaintiff's rights. Plaintiff is therefore guilty of malice and oppression, and Plaintiff is entitled to an award of punitive damages appropriate to punish Defendants, and to deter others from engaging in similar misconduct.

70. As a direct and proximate result of the acts and omissions alleged herein, it has become necessary for Plaintiff to retain the services of attorneys to prosecute this action, and Plaintiff therefore is entitled to recover its attorneys' fees and costs incurred herein.

IX.

FIFTH CLAIM FOR RELIEF
(Violation of 15 U.S.C.A. § 13 (Robinson-Patman Antidiscrimination Act of 1936))

71. Plaintiff incorporates by this reference the allegations contained in all of the preceding paragraphs as if fully set forth herein.

72. As alleged herein, Defendants's offering of special pricing to consumers, while declining to extend that special pricing to Plaintiff, in the sale of direct to the consumers of furniture like grade and quality, constitutes a violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Antidiscrimination Act of 1936, 15 U.S.C.A. § 13(a).

1 87. In fact, Defendants secretly provided customers who purchased directly from
2 CARACOLE through an e-commerce advertising platform with lower pricing, which allowed
3 customers to bypass Plaintiff and retailers like Plaintiff to purchase Caracole products at a
4 substantially reduced price.

5 88. Not surprisingly, customers utilize the e-commerce advertising sites to purchase
6 Caracole products online at substantially reduced rates, up to 40 % off the MSRP.

7 89. By virtue of Defendants's position as supplier and manufacturer to Plaintiffs
8 and Defendant's position as a direct competitor to Plaintiff, Defendants knew of Plaintiff's
9 prospective contractual relations with customers of Caracole products and the importance of
10 selling to said customers.

11 90. Defendants were not privileged or justified in covering up their price fixing
12 conspiracy that placed Plaintiff at a competitive disadvantage in the sales processes in order to
13 promote their own financial gain to the detriment of Plaintiff's prospective economic relations.

14 91. As a result of Defendants' misconduct, actual disruption and harm to Plaintiff's
15 prospective contracts with customers occurred.

16 92. As a direct result of Defendants' misconduct and the disruption and harm that
17 occurred, Plaintiff has suffered financial damage in an amount to be determined at trial, which
18 amount is in excess of One Million US Dollars.

19 93. Plaintiff alleges upon information and belief that the actions of Defendants were
20 done willfully, with the intent to cause injury to Plaintiff, and in conscious disregard of
21 Plaintiff's rights. Defendants, and each of them, are therefore, guilty of malice and oppression,
22 and Plaintiff is entitled to an award of punitive damages appropriate to punish Defendants, and
23 each of them, and to deter others from engaging in similar misconduct.
24
25

1 101. Plaintiff has been damaged by Defendant's breach of entire contract and
2 agreement. Such damages include loss of profits, excessive inventory cost, loss of revenue,
3 deterioration of its business enterprise, and other incidental and consequential damages.
4

5 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
6 jointly and severally, as follows:
7

8 1. Adjudge and decree that Defendant CARACOLE has breached its agreements and
9 contract with Plaintiff

10 2. Adjudge and decree that Defendant CARACOLE individually and together with
11 Defendants Perigold and Wayfar, acting in combination and conspiracy, has violated Section 1
12 of the Sherman Act, 15 USC §1.

13 3. For an award of damages in an amount in excess of \$10,000.00, the exact amount
14 to be proven at trial;

15 4. Issue a permanent order, restraining and enjoining Defendants CARACOLE,
16 WAYFAIR and PERIGOLD its agents and employees, and all persons active in concert or
17 participation who receive actual notice of the injunction and order by personal service or
18 otherwise, from continuing the unlawful acts and conduct,as described above.
19

20 5. For an award in the maximum amount as allowed in NRS 598A.210;

21 6. For an award of punitive damages, in an amount to be proven at trial;

22 7. For an award of pre-judgment and post-judgment interest on the amounts found
23 owing to Plaintiff, from the date such amount became due, at the highest rate allowed by law, as
24 applicable;

25 8. For an award of attorneys' fees pursuant to contract or law, as applicable;

